

REMARKS

The Restriction Requirement

Applicants thank Examiner Lu for speaking to their representative on September 10, 2002 to clarify certain aspects of the election/restriction requirement.

The Examiner states that Group I contains SEQ ID NOS: 2 and 3 encoding different proteins, which are structurally distinct chemical compounds unrelated to one another. The Examiner further states that the sequences constitute independent and distinct inventions within the meaning of 35 U.S.C. § 121 absent evidence to the contrary. Specifically, the Examiner states that Group I contains claims directed to the following patentably distinct species of the claimed invention:

Species I: ERK2 (claims 12 and 13); and

Species II: JNK3 (claims 12 and 14).

The Examiner states that applicant is required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. The Examiner further states that claims 10 and 11 are generic. The Examiner states that upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species that are written in dependent form or otherwise include all the limitations of the allowed generic claim. In the telephone interview, Examiner Lu confirmed that he would examine the full scope of generic claims 10 and 11, and would examine other species if claims 12 and 13 were found allowable.

Applicants elect Species I (ERK2) without traverse. Claims 12 and 13 read upon Species I. Claims 10 and 11 are generic.

This election is made expressly without waiver of applicants' rights to continue to prosecute and to obtain claims to the non-elected and/or canceled subject matter either in this application or in other applications claiming priority herefrom.

Sequence Rules Compliance

The Examiner states that the application fails to comply with the requirements of 37 C.F.R. §§ 1.821-1.825 because a copy of the Sequence Listing in computer readable form (CRF) has not been submitted as required by 37 C.F.R. § 1.821(e). See the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (copy attached as Exhibit A). Applicants traverse.

Applicants previously filed a Statement Under 37 C.F.R. § 1.821 (hereafter "Statement", copy attached as Exhibit B) on August 18, 2000 requesting that the CRF submitted in United States patent application 09/025,580, filed February 18, 1998 be used in the above-identified application. The Statement further stated that the paper copy of the Sequence Listing was identical to the CRF filed in the previous application. Thus, applicants believe that they fully comply with 37 C.F.R. §§ 1.821-1.825 and that no new CRF of the Sequence Listing is required.

Respectfully submitted,

Karen E. Brown

James F. Haley, Jr.

Reg. No. 27,994

Attorney for Applicant(s)

Karen E. Brown

Reg. No. 43,866

Agent for Applicant (s)

FISH & NEAVE

Customer No. 1473

1251 Avenue of the Americas

New York, New York 10020-1104

Tel.: (212) 596-9000

Fax: (212) 596-9090